

SECOND REGULAR SESSION

# HOUSE BILL NO. 1556

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE RIZZO.

Read 1<sup>st</sup> time January 22, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4067L.011

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### AN ACT

To repeal section 143.451, RSMo, and to enact in lieu thereof one new section relating to investment funds service corporations.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 143.451, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.451, to read as follows:

143.451. 1. Missouri taxable income of a corporation shall include all income derived from sources within this state.

2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income from sources within this state, including that from the transaction of business in this state and that from the transaction of business partly done in this state and partly done in another state or states. However:

(1) Where income results from a transaction partially in this state and partially in another state or states, and income and deductions of the portion in the state cannot be segregated, then such portions of income and deductions shall be allocated in this state and the other state or states as will distribute to this state a portion based upon the portion of the transaction in this state and the portion in such other state or states.

(2) The taxpayer may elect to compute the portion of income from all sources in this state in the following manner:

(a) The income from all sources shall be determined as provided, excluding therefrom the figures for the operation of any bridge connecting this state with another state.

(b) The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained shall be divided by the total sales or in cases where sales

19 do not express the volume of business, the amount of business transacted wholly in this state  
20 shall be added to one-half of the amount of business transacted partly in this state and partly  
21 outside this state and the amount thus obtained shall be divided by the total amount of business  
22 transacted, and the net income shall be multiplied by the fraction thus obtained, to determine the  
23 proportion of income to be used to arrive at the amount of Missouri taxable income. The  
24 investment or reinvestment of its own funds, or sale of any such investment or reinvestment,  
25 shall not be considered as sales or other business transacted for the determination of said  
26 fraction.

27 (3) For the purposes of this section, a transaction involving the sale of tangible property  
28 is:

29 (a) "Wholly in this state" if both the seller's shipping point and the purchaser's  
30 destination point are in this state;

31 (b) "Partly within this state and partly without this state" if the seller's shipping point is  
32 in this state and the purchaser's destination point is outside this state, or the seller's shipping point  
33 is outside this state and the purchaser's destination point is in this state;

34 (c) Not "wholly in this state" or not "partly within this state and partly without this state"  
35 only if both the seller's shipping point and the purchaser's destination point are outside this state;

36 (d) For purposes of this subdivision the purchaser's destination point shall be determined  
37 without regard to the FOB point or other conditions of the sale, and the seller's shipping point  
38 is determined without regard to the location of the seller's principle office or place of business.

39 (4) For purposes of this subsection, the following words shall, unless the context  
40 otherwise requires, have the following meaning:

41 (a) "Administration services" include, but are not limited to, clerical, fund or shareholder  
42 accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial,  
43 internal auditing, legal and tax services performed for an investment company;

44 (b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a- 2(a)(3)(C), as may be  
45 amended from time to time;

46 (c) "Distribution services" include, but are not limited to, the services of advertising,  
47 servicing, marketing, underwriting or selling shares of an investment company, but, in the case  
48 of advertising, servicing or marketing shares, only where such service is performed by a person  
49 who is, or in the case of a closed end company, was, either engaged in the services of  
50 underwriting or selling investment company shares or affiliated with a person that is engaged in  
51 the service of underwriting or selling investment company shares. In the case of an open end  
52 company, such service of underwriting or selling shares must be performed pursuant to a contract  
53 entered into pursuant to 15 U.S.C. Section 80a-15(b), as from time to time amended;

54 (d) "Investment company", any person registered under the federal Investment Company

55 Act of 1940, as amended from time to time, (the act) or a company which would be required to  
56 register as an investment company under the act except that such person is exempt to such  
57 registration pursuant to Section 80a-3(c)(1) of the act;

58 (e) "Investment funds service corporation" includes any corporation or S corporation  
59 doing business in the state which derives more than fifty percent of its gross income in the  
60 ordinary course of business from the provision directly or indirectly of management, distribution  
61 or administration services to or on behalf of an investment company or from trustees, sponsors  
62 and participants of employee benefit plans which have accounts in an investment company. An  
63 investment funds service corporation shall include any corporation or S corporation providing  
64 management services as an investment advisory firm registered under Section 203 of the  
65 Investment Advisors Act of 1940, as amended from time to time, regardless of the percentage  
66 of gross revenues consisting of fees from management services provided to or on behalf of an  
67 investment company;

68 (f) "Management services" include but are not limited to, the rendering of investment  
69 advice directly or indirectly to an investment company **or a separately managed account**,  
70 making determinations as to when sales and purchases of securities are to be made on behalf of  
71 the investment company, or the selling or purchasing of securities constituting assets of an  
72 investment company, and related activities, but only where such activity or activities are  
73 performed:

74 a. Pursuant to a contract with the investment company **or separately managed account**  
75 entered into pursuant to 15 U.S.C. Section 80a-15(a) **or as described in section 205 of the**  
76 **Investment Advisors Act of 1940 or rules thereunder**, as from time to time amended;

77 b. For a person that has entered into such contract with the investment company **or**  
78 **separately managed account**; or

79 c. For a person that is affiliated with a person that has entered into such contract with an  
80 investment company **or separately managed account**;

81 (g) "Qualifying sales", gross income derived from the provision directly or indirectly of  
82 management, distribution or administration services to or on behalf of an investment company,  
83 **a separately managed account** or from trustees, sponsors and participants of employee benefit  
84 plans which have accounts in an investment company **or separately managed account**. For  
85 purposes of this section, gross income is defined as that amount of income earned from  
86 qualifying sources without deduction of expenses related to the generation of such income;

87 (h) "Residence", presumptively the fund shareholder's **or separately managed account**  
88 **principal owner's** mailing address on the records of the investment company. If, however, the  
89 investment company or the investment funds service corporation has actual knowledge that the  
90 fund shareholder's **or separately managed account principal owner's** primary residence or

91 principal place of business is different than the fund shareholder's **or separately managed**  
92 **account principal owner's** mailing address **on such records**, such presumption shall not  
93 control. To the extent an investment funds service corporation does not have access to the  
94 records of the investment company, the investment funds service corporation may employ  
95 reasonable methods to determine the investment company fund shareholder's **or separately**  
96 **managed account principal owner's** residence;

97 (i) **"Separately managed account", any discretionary advisory account established**  
98 **through an investment funds service corporation and that establishes its principal business**  
99 **headquarters in this state after January 1, 2001, by an institutional investor, including but**  
100 **not limited to a bank, savings and loan association, insurance company, corporation,**  
101 **defined benefit pension or retirement plan, foundation, charitable trust, or nonprofit**  
102 **institution, pursuant to an investment advisory contract described in section 205 of the**  
103 **Investment Advisors Act of 1940 or rules thereunder, as amended from time to time.**

104 (5) Notwithstanding other provisions of law to the contrary, **including without**  
105 **limitation sections 620.1350 and 620.1355, RSMo**, qualifying sales of an investment funds  
106 service corporation, or S corporation, shall be considered wholly in this state only to the extent  
107 that the **separately managed account principal owners or the** fund shareholders of the  
108 investment companies, to which the investment funds service corporation, or S corporation,  
109 provide services, are resided in this state. Wholly in this state qualifying sales of an  
110 investment funds service corporation, or S corporation, shall be determined as follows:

111 (a) By multiplying the investment funds service corporation's total dollar amount of  
112 qualifying sales from services provided to each investment company by a fraction, the numerator  
113 of which shall be the average of the number of shares owned by the investment company's fund  
114 shareholders, **in the case of mutual fund, or the dollar amount to the credit of all separately**  
115 **managed account principal owners**, resided in this state at the beginning of and at the end  
116 of the investment company's taxable year that ends with or within the investment funds service  
117 corporation's taxable year, and the denominator of which shall be the average of the number of  
118 shares owned by the investment company's fund shareholders, **in the case of a mutual fund, or**  
119 **the total dollar amount to the credit of all separately managed account principal owners**,  
120 everywhere at the beginning of and at the end of the investment company's taxable year that ends  
121 with or within the investment funds service corporation's taxable year;

122 (b) A separate computation shall be made to determine the wholly in this state qualifying  
123 sales from each investment company **or separately managed account**. The qualifying sales for  
124 each investment company **or separately managed account** shall be multiplied by the respective  
125 percentage of each fund **or separately managed account**, as calculated pursuant to paragraph  
126 (a) of this subdivision. The product of this equation shall result in the wholly in this state

127 qualifying sales. The qualifying sales for each investment company which are not wholly in this  
128 state will be considered wholly without this state;

129 (c) To the extent an investment funds service corporation has sales which are not  
130 qualifying sales, those nonqualified sales shall be apportioned to this state based on the  
131 methodology utilized by the investment funds service corporation without regard to this  
132 subdivision.

133 3. Any corporation described in subdivision (1) of subsection 1 of section 143.441  
134 organized in this state or granted a permit to operate in this state for the transportation or care  
135 of passengers shall report its gross earnings within the state on intrastate business and shall also  
136 report its gross earnings on all interstate business done in this state which report shall be subject  
137 to inquiry for the purpose of determining the amount of income to be included in Missouri  
138 taxable income. The previous sentence shall not apply to a railroad.

139 4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall  
140 include in its Missouri taxable income all income arising from all sources in this state and all  
141 income from each transportation service wholly within this state, from each service where the  
142 only lines of such corporation used are those in this state, and such proportion of revenue from  
143 each service where the facilities of such corporation in this state and in another state or states are  
144 used, as the mileage used over the lines of such corporation in the state shall bear to the total  
145 mileage used over the lines of such corporation. The taxpayer may elect to compute the portion  
146 of income from all sources within this state in the following manner:

147 (1) The income from all sources shall be determined as provided;

148 (2) The amount of investment of such corporation on December thirty-first of each year  
149 in this state in fixed transportation facilities, real estate and improvements, plus the value on  
150 December thirty-first of each year of any fixed transportation facilities, real estate and  
151 improvements in this state leased from any other railroad shall be divided by the sum of the total  
152 amount of investment of such corporation on December thirty-first of each year in fixed  
153 transportation facilities, real estate and improvements, plus the value on December thirty-first  
154 of each year, of any fixed transportation facilities, real estate and improvements leased from any  
155 other railroad. Where any fixed transportation facilities, real estate or improvements are leased  
156 by more than one railroad, such portion of the value shall be used by each railroad as the rental  
157 paid by each shall bear to the rental paid by all lessees. The income shall be multiplied by the  
158 fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri  
159 taxable income.

160 5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall  
161 include in its Missouri taxable income one-half of the net income from the operation of a bridge  
162 between this and another state. If any such bridge is owned or operated by a railroad corporation

163 or corporations, or by a corporation owning a railroad corporation using such bridge, then the  
164 figures for operation of such bridge may be included in the return of such railroad or railroads;  
165 or if such bridge is owned or operated by any other corporation which may now or hereafter be  
166 required to file an income tax return, one-half of the income or loss to such corporation from  
167 such bridge may be included in such return by adding or subtracting same to or from another net  
168 income or loss shown by the return.

169 6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall  
170 include in its Missouri taxable income all income arising from all sources within this state.  
171 Income shall include revenue from each telephonic or telegraphic service rendered wholly within  
172 this state; from each service rendered for which the only facilities of such corporation used are  
173 those in this state; and from each service rendered over the facilities of such corporation in this  
174 state and in other state or states, such proportion of such revenue as the mileage involved in this  
175 state shall bear to the total mileage involved over the lines of said company in all states. The  
176 taxpayer may elect to compute the portion of income from all sources within this state in the  
177 following manner:

178 (1) The income from all sources shall be determined as provided;

179 (2) The amount of investment of such corporation on December thirty-first of each year  
180 in this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be  
181 divided by the amount of the total investment of such corporation on December thirty-first of  
182 each year in telephonic or telegraphic facilities, real estate and improvements. The income of  
183 the taxpayer shall be multiplied by fraction thus obtained to determine the proportion to be used  
184 to arrive at the amount of Missouri taxable income.

185 7. From the income determined in subsections 2, 3, 4, 5 and 6 of this section to be from  
186 all sources within this state shall be deducted such of the deductions for expenses in determining  
187 Missouri taxable income as were incurred in this state to produce such income and all losses  
188 actually sustained in this state in the business of the corporation.

189 8. If a corporation derives only part of its income from sources within Missouri, its  
190 Missouri taxable income shall only reflect the effect of the following listed deductions to the  
191 extent applicable to Missouri. The deductions are: (a) its deduction for federal income taxes  
192 pursuant to section 143.171, and (b) the effect on Missouri taxable income of the deduction for  
193 net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable  
194 to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri  
195 taxable income by the ratio for the year of the Missouri taxable income of the corporation for the  
196 year divided by the Missouri taxable income for the year as though the corporation had derived  
197 all of its income from sources within Missouri. For the purpose of the preceding sentence,  
198 Missouri taxable income shall not reflect the listed deductions.

199           9. Any investment funds service corporation organized as a corporation or S corporation  
200   which has any shareholders resided in this state shall be subject to Missouri income tax as  
201   provided in this chapter.